

**The Twenty-seventh Amendment in its Constitutional Context:
Amendments and the Amending Process**

An Honors Thesis (HONRS 499)

by

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Purpose of Thesis

This composition offers a description of the newest amendment to our Constitution within the context of the evolution of the entire document. A brief discussion of the 1787 Constitutional Convention is followed by an account of the origin of the Bill of Rights. A subsequent section offers a brief synopsis of the development of each amendment from the Eleventh to the Twenty-sixth. An explanation is then given of the political processes involved in amending the Constitution. The discourse concludes with a detailed focus on the development of the Twenty-seventh Amendment, beginning with its conception during the birth of the Bill of Rights, to its ratification 203 years later in 1992.

Many Americans realize the importance of our Constitution and know that it is indeed the supreme law of the land, yet few understand fully its origins and its pervasiveness even in today's government. It is nonetheless a source of national focus and pride. Patterson states, "the Constitution has come to be revered by Americans; it has even become a national icon" (53). Our Constitution is not, however, a static document of policy. It serves as our guide for every governmental operation and is ever-changing. From its first state ratification in 1787 and through each subsequent ratification, a Bill of Rights (ratified in 1791), and seventeen other amendments (the most recent ratified in 1992), our Constitution remains the document that each President and Supreme Court justice must swear to defend and the code by which each American lives.

The Constitutional Convention--1787-88

The first spark of our Constitution was evident in September of 1786 when delegates from all states were to meet in Annapolis, Maryland in order to form a stronger national government than the one that had been provided in the Articles of Confederation. The Articles had proved to be inadequate for solving disputes, provided no chief executive, and only a unicameral legislature (The Commission 6).

Sadly, only five states sent delegates to this convention. James Madison of Virginia and Alexander Hamilton of New York, however, were not discouraged. They led in the organization of another convention to be held the following May in Philadelphia, then the nation's largest city

(Peltason 11). Congress gave its consent for the May 1787 Convention with the stipulation that the delegates meet

. . . for the sole and express purpose of revision of the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the states, render the federal constitution adequate to the exigencies of Government & the preservation of the Union. (qtd. in Peltason 12)

So meet they did; seventy-four delegates were appointed, fifty-five delegates from twelve of the thirteen states attended (Rhode Island was not represented), and approximately 40 took a lead in deliberations (Peltason 12). Conspicuously absent from the convention were such "fiery leaders of the revolution" as Patrick Henry, who was appointed but refused to attend, Thomas Jefferson and John Adams, who were carrying out diplomatic duties abroad, Thomas Paine, who had returned to England, and John Hancock and Samuel Adams, who were not selected as delegates. Leaders at the Convention included prominent and prosperous citizens such as George Washington, James Madison, Edmund Randolph, Benjamin Franklin, James Wilson, and Gouverneur Morris (Peltason 12). Although George Washington, probably the most famous and respected of the delegates, was unanimously selected to preside over the convention (Peltason 13), it has been observed that "More than any other member, [James] Madison was the architect of the Constitution" (Patterson 54).

With all members present and Washington presiding, debate began on what would be the best form of government for the young nation to adopt. James Madison first formulated the "Virginia Plan," so called because it was

originally presented to the convention by Edmund Randolph, Governor of Virginia. This plan proposed a strong central government consisting of an executive, legislative, and judicial branch and specified a bicameral legislature, the representation of which would be determined entirely by population (Patterson 54-55). This proposal, however, was countered with the so called "New Jersey Plan." This plan reflected the fear that a strong central government would "swallow up" the states, especially small states. The New Jersey plan changed the Articles of Confederation little and proposed a unicameral legislature in which all states would be equally represented (Patterson 55).

Proponents of the New Jersey Plan became known as "Anti-Federalists" and not only argued for a weaker central government, but for the inclusion of a bill of rights (The Commission 6). The question was not even addressed on the Convention floor until September 12, 1787, five days before the Constitution's signing, when George Mason, author of the Virginia Declaration of Rights, and Elbridge Gerry, who feared lack of representation for Massachusetts, proposed discussion. Mason's motion to include a bill of rights was defeated 10-0 with Massachusetts abstaining (The Commission 7). There would be no such bill of rights included in the final draft.

Finally, after more than two weeks of deadlock and debate, the delegates arrived at the "Connecticut Compromise," so called because it was proposed by Roger Sherman, a delegate from Connecticut. The compromise called for a bicameral legislature in which representation in the House of Representatives would be determined by population and each state would be equally represented by two members in the Senate (Patterson, 57). By this

time, forty-two of the original fifty-five delegates remained in Philadelphia and on September 17, 1787, thirty-nine of them, excluding Mason, Gerry, and Edmund Randolph, signed the Constitution and it was forwarded to the states for ratification (The Commission 6).

Less than three months after its submission to the states, the Constitution had been ratified by Delaware, Pennsylvania, and New Jersey. By January of 1788, Georgia and Connecticut had also ratified it, but nine total states were needed (The Commission 6). Since they were not appeased during the Convention, the Anti-Federalists adopted the strategy of blocking ratification and demanding a new convention (Grimes 7). When the Massachusetts ratifying convention took place in April of 1788, the first organized opposition to the new Constitution surfaced. The Constitution was ratified in Massachusetts by only nineteen votes on the agreement that Federalists would support amendments after ratification (The Commission 6-7). Subsequent state ratification conventions also entailed such bargains and included some specific recommendations. It has even been noted that "such bargains saved the Constitution from defeat in . . . Virginia and New York (The Commission 7). The Constitution was officially declared ratified on July 2, 1788.

The Bill of Rights--1789-91

We may note that, "A key issue addressed, but not resolved, in the Constitutional Convention, and which figured prominently in the ratification debates, was a national bill of rights" (The Commission 7). So on

May 4, 1789, Representative James Madison of Virginia proposed that debate on amendments begin at the end of the month. Madison originally opposed the inclusion of a bill of rights at the Philadelphia convention and at the Virginia ratification convention, but its near defeat in Virginia aroused his fear of the demand for a new convention and caused him to reconsider his position (The Commission 8). Eight of the thirteen states, including Virginia, had bills of rights already in effect (The Commission 7). These ideas, principally those included in Massachusetts' and Virginia's documents, were utilized in the national bill of rights (Grimes 4-5).

After reviewing more than 200 recommendations from the states, Madison submitted his first proposal on June 8, 1789. It consisted of eight amendments comprising seventeen changes in the Constitution. The first amendment proposed that all power should be vested in the people, that government should be exercised for the people's benefit, and that people have a right to reform their government. Much of these ideas were derived from the Virginia Declaration of Rights. The second amendment referred to the number of representatives in the House and the number of citizens they would represent. His third amendment proposed that no pay increase could take effect for members of Congress until after an election had taken place. His last five proposals included the language of the Bill of Rights as we know it today. Madison also proposed that each amendment be added to the Article and Section where it was appropriate, but at the insistence of Roger Sherman of Connecticut, it was decided that amendments would be added to the end of the Constitution in numerical order (The Commission 8).

The first of Madison's proposed amendments was rejected in

committee and the rest were assigned numbers. On August 24, 1789, the House approved seventeen amendments and they were sent to the Senate. The House and the Senate agreed on twelve amendments, beginning with Madison's remaining two. On September 25, 1789, the amendments were offered to the states for ratification. New Jersey ratified eleven amendments (they rejected Madison's second remaining proposal). Maryland ratified all twelve amendments, as did North Carolina who also ratified the Constitution itself because of the inclusion of the amendments. When Vermont joined the Union in 1791, the ratification of eleven states became necessary and this was realized as Vermont became the tenth state to ratify amendments and Virginia became the eleventh. Ten amendments were actually ratified on December 15, 1791 and our new Constitution had a Bill of Rights.

Amendments 11-26--1794-1971

The Bill of Rights was not to be a solitary addition to the Constitution, it was merely to set a precedent for changes to come. In the next 180 years, sixteen more amendments were to become a part of this national document and the "supreme law of the land."

Amendment XI

The Eleventh Amendment to the Constitution was proposed on March 4, 1794 and essentially prohibited citizens of a particular state or of a foreign

country from filing a lawsuit against another state. It is expressed in the amendment that U.S. judicial power would not extend to suits of this nature. This change in the Constitution stems from a Supreme Court decision in 1792 that allowed federal courts to have jurisdiction in a case brought by a citizen of South Carolina against Georgia. Following this decision, there was a great alarm that many similar suits would be filed against states who were in default on debts. The eleventh amendment basically recalled the Supreme Court decision (Peltason 307). This amendment seems to have passed both chambers of Congress without recorded debate (Grimes 18). Only two states failed to ratify the Eleventh (Grimes 19) and it was proclaimed effective on January 8, 1798 (Peltason 307).

Amendment XII

The Twelfth Amendment to the Constitution was proposed on December 8, 1803 and sets certain standards for presidential elections. It has since been superseded by the Twentieth Amendment and modified by the Twenty-fifth. The need for the Twelfth Amendment was sparked by the presidential election of 1800. At this time, the candidate elected with the most votes became president and the candidate with the second most votes became the vice-president. In 1800, Republican-Democratic candidates Thomas Jefferson and Aaron Burr tied. The election was sent to the House of Representatives and Thomas Jefferson was elected. The Twelfth Amendment was immediately drafted to prevent such a situation from occurring again (Peltason 311). This amendment requires electors to cast separate votes

specifying their choice for president and vice-president. In the event no candidate receives a majority of electoral votes for president, the House of Representatives chooses from among the top three candidates. If no one has received a majority of votes for vice-president, the Senate chooses from among the top two candidates (Peltason 311).

After a long debate in the Senate, the amendment passed on December 2, 1803 and passed the House one week later (Grimes, 25). Although three states rejected the amendment, it was ratified on September 25, 1804, in time for the 1804 presidential election (Peltason 311).

Amendment XIII

The Thirteenth Amendment was the first of a series of three amendments known as the Civil War Amendments. It was proposed on January 31, 1865 and in effect abolished the institution of slavery. Before its adoption, each state could decide for itself if slavery would exist within its borders (Peltason 314). Also significant in this amendment was the substance contained in Section Two which, for the first time, gave Congress the power to enforce the amendment through appropriate legislation. This essentially gave Congress the authority to determine what comprises slavery and “translate that determination into effective legislation” (Peltason 315). Following debate in both the House and Senate, the Senate Judiciary Committee produced the Thirteenth Amendment as we know it today (Grimes 35). It carried in the Senate on April 8, 1864, but did not come under full discussion in the House until June of 1864. It failed to pass with the

required two-thirds until January of 1865 (Grimes 37-39). It was ratified by the states on December 6, 1865.

Amendment XIV

The Fourteenth Amendment was proposed on June 13, 1866 (Peltason 316). It was principally concerned with giving citizenship to former slaves and has since been implemented in many cases involving the civil rights of citizens. According to Livingston, the Fourteenth Amendment was “designed to make citizens of the former slaves and to guarantee them certain civil liberties” (204).

The Fourteenth Amendment guarantees two things that have become and integral part of our civil liberty philosophy; due process of the law and equal protection under the laws. The “due process” clause essentially imposes the same limits on state governments as the Fifth Amendment does on the national government. Discrimination that takes place among private citizens is not in violation of the Fourteenth Amendment. The “equal protection” clause has been applied in several cases concerning discrimination at different levels and in several different classifications (such as race, color, and religion) (Peltason 320-50). The “equal protection” clause is in effect the “Court’s major instrument for scrutinizing state regulations” (Peltason, 319). Section Two of the amendment supersedes Article I Section 2 of the Constitution. For the purpose of representation, former slaves would count as a whole person rather than three-fifths (Peltason 350). A combination of this section and the Thirteenth Amendment posed a problem for those in Congress. With every

former slave counting one person, the legislature would be flooded with Southerners and Southern sympathizers (Grimes 42). So Section Three of the amendment was born. This section barred from public office anyone who had taken an oath to protect the Constitution and subsequently engaged in rebellion against the government (Grimes 42). This section in effect "politically disabled those who had led the Southern states into the Confederacy" (Peltason 351).

After passing both the House and Senate, the amendment encountered a difficult ratification. The Secretary of State issued a preliminary certification on July 20, 1868 and a Congressional resolution of ratification was issued the next day. Then, on July 28th, noting that Alabama and Georgia had since ratified the amendment, the Secretary of State issued the final certification (Grimes 50-51).

Amendment XV

Amendment XV was proposed on February 26, 1869 and was the last of the "Civil War Amendments." The primary purpose of this amendment was to grant former slaves the right to vote (Peltason 354). In the passing of this amendment, Republicans were especially in support of it. Grimes has suggested a couple of reasons for their advocacy. First, they stood to gain the African-American vote in both the North and the South. Also, there seemed to be an element of conscience involved in granting the vote to those previously oppressed (53-54). Much debate took place in both the House and Senate over wording of the article and on whether the amendment should

protect only the right to vote or the right to vote and hold office (Grimes 54-56). A conference committee was eventually appointed and returned with the present wording of the amendment protecting only the right to vote regardless of race, color, or previous condition of servitude. The article passed both the Senate and the House and a Certificate of Ratification was issued by the Secretary of State on March 30, 1870 (Grimes 58).

Amendment XVI

The next amendment to the Constitution, the Sixteenth, was not proposed until July 12, 1909. This amendment established an income tax. From the Civil War until 1895, various income taxes were levied with the support of the Supreme Court, but in 1895, the Supreme Court ruled in Pollock V. Farmers' Loan and Trust Company that tax on income from property was equal to a tax on the property itself and was a direct tax and therefore unconstitutional. Income taxes were "rendered impractical" until the adoption of the Sixteenth Amendment (Peltason 358). Amendment XVI passed the House and Senate easily and saw speedy ratification in the Southern and Western states, but encountered difficulty in the Northeastern states. It was declared valid on February 25, 1913 (Grimes 74).

Amendment XVII

Even before the ratification of the Sixteenth Amendment, the Seventeenth had been proposed. It was proposed on May 13, 1912 and

provided for the direct election of senators. According to Peltason, "The adoption of the Seventeenth Amendment merely rounded out a reform that had long been underway" (359). Previous to its adoption, senators were elected by state legislatures. Many representatives present in these legislatures had been elected within a corrupt political system controlled by local city bosses (Grimes 75). Although many states, (especially in the West), already directly elected senators, the amendment was designed to make it standard practice and reduce corruption (Grimes 76). Livingston notes that, "The principle obstacle to the reform was the Senate itself. On five occasions the House passed the proposal, the first time in 1894, but it was not until 1911 that it came to a vote in the Senate" (207). Truly, the amendment proposal caused great division among party lines, but after much maneuvering, it passed both chambers and was ratified on May 31, 1913 (Grimes, 82).

Amendment XVIII

This amendment is commonly known as "Prohibition." It was proposed on December 18, 1917 and made the consumption of alcohol illegal in the United States. This article was eventually repealed by the Twenty-first amendment. Although Prohibition did not have popular support of large groups of citizens, an interest group, the Anti-Saloon League, became the driving force behind the amendment (Peltason 359). The rapid ratification of the Sixteenth and Seventeenth Amendments encouraged proponents of prohibition to pursue a Constitutional amendment (Livingston 208). Section Two of the amendment introduced a new feature into Constitutional

amendments; it gave states power to enforce the article. Most states, however, repealed their enforcement policies by 1929 and left enforcement to the national government (Peltason 360). Two other new features were introduced in this article. First, the amendment was not to go into effect until one year after its ratification. Also, in Section Three, a seven-year time limit was set for ratification. It was the first such time limit set (Livingston 208). This was not a problem, however, as the amendment was ratified on January 29, 1919, within thirteen months of its submission to the states (Grimes 89).

Amendment XIX

The Nineteenth Amendment was proposed on June 4, 1919 and is commonly known as the Women's Suffrage amendment; it prohibited denying the vote to someone on the basis of gender. In 1890, women had already been admitted to full suffrage in Wyoming, and by the time the amendment was adopted, fifteen states and Alaska had granted universal suffrage, fourteen states had granted "presidential suffrage" to women and two states had granted them "primary suffrage" (Peltason 360). In light of these circumstances, the proposal passed both the House and Senate easily and was certified on August 25, 1920 (Grimes 95). It may be noted that

. . . the Sixteenth, Seventeenth, Eighteenth, and Nineteenth amendment were the response of the progressive movement in American politics to the industrialization, urbanization, and immigration that had taken place around the turn of the century. (Grimes 96)

Amendment XX

The Twentieth Amendment to the Constitution was proposed on March 3, 1932 and reset the dates on which the terms of the President and Congress begin and end. It is often referred to as the "Lame-Duck" amendment. The amendment specifically set January 3rd as the date that Congressmen's terms would begin and end and January 20th for the date that the President's terms would begin and end (Peltason 361). Before the adoption of the Twentieth Amendment, officials elected in November did not take office until the following March and those defeated in the election ("lame-ducks") continued to serve until that time. These date changes shortened that period (Peltason 361). The amendment also stipulated that the Congressional session was to begin when a new Congress took office on January 3rd. Previously, Congress convened in December; that is, candidates were elected in November, took office in March, and did not convene until December, thirteen months after their election. The Twentieth Amendment also eliminated this legislative gap (Grimes 105). This article also included a seven-year time limit for ratification, but all 48 states had ratified it by May of 1933 (Grimes 108).

Amendment XXI

The Twenty-first Amendment, the repeal of Prohibition, was proposed on February 20, 1933. After the ratification of the Eighteenth Amendment, it soon became apparent that Prohibition had not curbed alcohol consumption,

it had merely put profit into the pockets of criminals. The primary purpose of the amendment was to simply repeal Prohibition, but the second article of the amendment also gave alcohol regulation power back to the individual state governments (Peltason 363). This amendment also included the seven-year ratification time limit, but this became the only amendment to be ratified by state convention rather than a legislative vote, and in 1933, 38 state conventions were held, thirty-seven of which ratified Amendment XXI. It was declared in force on December 5, 1933 (Livingston 211).

Amendment XXII

The Twenty-second Amendment was proposed on March 24, 1947 and limited each president to two terms in office, or ten years if he ascended to the presidency during the first half of the term of his predecessor. This provision seems to have been adopted in reaction to the election of Franklin Delano Roosevelt to an unprecedented four terms (Peltason 366). Grimes suggests that the Twenty-second Amendment was specifically the reaction of newly empowered Republicans to the Democrat's four-term stint in office (113). This amendment included the provision that it not apply to the current executive officer, Harry Truman. A seven-year time limit was set on ratification, but "there was very little discussion of its significance; in some instances, the legislators voted for ratification without debate" (Peltason 367). For some reason, however, the process lagged and the amendment took four years to ratify, up until then, the longest time taken (Livingston 212). It was certified as adopted on March 1, 1951.

Amendment XXIII

The Twenty-third amendment was proposed on June 16, 1960 and granted the District of Columbia presidential electors. Debate leading to this amendment originated as a result of Cold War politics. If the capital were bombed and most of Congress killed, the United States would not be able to legislatively cope until another election. Senators could be replaced by temporary gubernatorial appointees, but no such provision existed for the House of Representatives. Some legislators saw in this debate an opportunity to extend the voting franchise to Washington D.C. (Grimes 126). So an amendment was proposed granting just that. It passed the House and Senate and was ratified by the states very quickly, within nine months (Grimes 130). Washington D.C. was granted three electoral votes, the minimum number granted (Peltason 368).

Amendment XXIV

The Twenty-fourth Amendment was proposed on August 27, 1962 and abolished the use of the poll tax. It was designed to forbid the poll tax as a condition for voting in presidential and congressional elections (Peltason 368). Amendment XXIV passed both chambers of Congress easily and was declared ratified on February 4, 1964. In 1966, the Supreme Court upheld the Twenty-fourth Amendment by implementing the Fourteenth. The Court held in Harper v. Virginia Board of Electors that the equal protection clause “precludes a state from imposing a poll tax as a requirement to vote in *any*

election" (qtd. in Peltason 368-9).

Amendment XXV

The Twenty-fifth Amendment was proposed on July 6, 1965 and address the issue of presidential disability. It specifies what is to occur when vacancies in the office of president or vice-president occur or when a president is temporarily or permanently unable to fulfill his duties. The amendment "merely confirms what has been the consistent practice of the eight vice presidents who have acceded to the presidency on the death of the president" (Peltason 369). By including the provision that the vice-president would become president upon the resignation of a president, the amendment precludes a president from resigning and attempting to return to office (Peltason 369). The Twenty-fifth Amendment was ratified within two years of its submission to the states, with no state rejecting (Grimes 140-41). It was declared ratified on February 10, 1967.

Amendment XXVI

The Constitution's Twenty-sixth Amendment was proposed on March 23, 1971 and granted suffrage to all those eighteen years of age or older. "After the Supreme Court ruled that Congress lacked the authority to set the voting age for state and local elections but could do so for national elections, Congress proposed this amendment" (Peltason 373). Rationale behind the amendment included the idea that education had improved and increased

among the population so much since the turn of the century that eighteen-, nineteen-, and twenty-year olds were now mature and educated enough to participate in the political process on all levels (Grimes 144-45). The amendment was ratified on June 30, 1971, within five weeks after its submission to the states, the most rapid ratification of any of the amendments (Peltason 373).

The Amending Process

The exact procedure for amending our Constitution is set forth in Article V. Schechter suggests that we are actually provided two avenues of Constitutional change; amendment through specific use of the procedures prescribed in Article V and adaptation principally through use of judicial review (163). Schechter also states,

The language and intent of Article V have set the *outer* limits of its use, while political traditions and practices have served to *reduce* the . . . uncertainties of its use. . . . As a result, the amendment process is relatively straightforward and uncontroversial. (167)

The process requires extraordinary majorities in Congress and of the states, resulting in a "concurrent majority." Madison described the process as "neither wholly federal nor wholly national" (Schechter 167). Thus far, it has been suggested that two "traditions" have served to limit the amending process. First, while Article V allows for correction or amendment of the Constitution, it does not allow for alteration of the basic plan nor does it provide for the making of a new Constitution. Second, subjects of

amendments are generally of the “character of fundamental law, . . . , and not merely social and economic policy.” Most amendments have been consistent with these two traditions (Schechter 171-2).

Article V provides us with two ways of proposing amendments and two ways of ratifying them. An amendment may be proposed either by a resolution passed by a two-thirds vote of both houses of Congress, or by a national convention that Congress calls if asked to do so by two-thirds of all state legislatures. So far, all amendments to the Constitution have been proposed in Congress (Patterson 80). According to Livingston, “of all the proposals introduced into Congress, only a small number are even considered at all” (216). Thirty to forty of those resolutions have failed because of the opposition of one or the other of the Houses; this is a small part all that have failed, but agreement of both Houses has in some cases prevented a proposal’s submission to the states (Livingston 217).

Amendments may also be ratified in one of two ways. They may either be approved by three-fourths of all state legislatures or by three-fourths of the states via state ratifying conventions. Only the Twenty-first Amendment so far has been approved by the convention method (Patterson 80). According to Article V, Congress decides the method by which ratification will occur. These alternative paths for constructing a concurrent majority provide “a check against the excessive use or restraint of the amendment process by Congress and state legislatures” (Schechter 167-68).

Schechter says, “the principal actors in the amendment process are legislators and those who attempt to influence them” (170). Key roles are often filled by amendment sponsors whose names often become attached to

proposals, floor and committee leaders who can ease or stall amendment legislation, and procedural experts. Party voting blocs and regional ties are important considerations when organizing strategies for amendment legislation. A good deal of amendment legislation has also been influenced by interest groups; a good example is the role of the Anti-Saloon league in the proposal and ratification of the eighteenth amendment (Schechter 170).

The Court also has an important role in the amending process. It is their job to "Keep the field clear of outside players not prescribed in Article V" (Schechter 168). In their very first decision on the amending process, Hollingsworth v. Virginia, in 1798, the Court dictated that the president may sign, but not block proposed amendments and that amendments take effect automatically on approval of necessary number of states unless Congress prescribes a "grace period" (Schechter 169). The Court has also made other rulings on amendments, including one that emphasizes that state ratifications are a "federal function" and states may not make ratification conditional upon approval by popular referendum; also that "the will of a state legislature acting as a ratifying body may not be impeded by state constitutional provisions" (Schechter 170).

One of the Court's most influential rulings regarding amendments, however, concerned itself with ratification time limits. Generally, when an amendment is rejected by too many states or is not acted upon by enough, it simply remains open unless a time limit has been previously prescribed by Congress (Livingston 227). A question concerning time limits arose in 1939 when it looked as if a "child labor amendment" could be ratified after a fifteen-year lapse. The proposal had been pending since 1924 in an effort to

overturn the Court's 1918 decision in Hammer v. Dagenhart which prevented Congress from regulating child labor in the states. The Supreme Court ruled in Coleman v. Miller that ratification was a political question not to be decided by the Court, but one in which Congress would have final say. The question concerning this particular proposal became moot when the Court reversed its Hammer v. Dagenhart decision that had sparked the debate. From that point on, however, Congress would have the power to decide what constitutes proper ratification (Lieberman 370).

Following the child labor case, Congress regularly placed a seven-year ratification time limit on proposed amendments (Lieberman 371). The first time limit had been set in 1917 with the eighteenth amendment, but the seven-year span has normally allowed ample time for the amendment to pass. There are some cases, however, in which the time limit has caused the nullification of a proposal. When, in 1979, after ratification by thirty-five of the thirty-eight required states, the Equal Rights Amendment looked as if it would not be ratified by the March deadline, Congress voted to extend the deadline to June 30, 1982. Still, no additional states ratified the amendment and it failed (Patterson 81-82). Also, an amendment proposed in 1978 that would essentially repeal the Twenty-third Amendment, treating Washington D.C. as a state for the purposes of representation, failed when its deadline expired without full ratification in 1985 (Patterson 82).

The Twenty-seventh Amendment--1789-1992

Very recently, ratification time limits, (or lack thereof), have become

the concern of many. By January of 1992, several antiquated proposals, including two from the Bill of Rights period were still technically pending; none had been ratified. Livingston suggested that "It is hardly reasonable to suppose that all of them are still equally available for ratification by the states, yet the Constitution sets no limit on their effective life" (227). One of those proposals, proposed first as part of the original Bill of Rights by James Madison in 1789, is listed in one of Schechter's tables. Its "Current Status" (1985) is proclaimed as "No deadline, but presumably expired" (169). This particular proposal bars Congress from varying its own pay until after an intervening election has occurred. In May of 1992, it was to become the Twenty-seventh Amendment to our Constitution.

This idea was popular in Madison's time when Congress was paid less than \$1000 per year. Since then, Congressional pay has risen to about \$129,500 per year, "but public scorn for lawmakers who raise their own pay has changed little" (Eaton). In 1789, James Madison said,

There is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose such a change. (qtd. in Eaton)

Although that same sentiment often pervades society even today, the amendment's ratification was not met without opposition. After 203 years, the validity of its ratification came into question as well as the actual substance contained in the amendment. Constitutional experts recently commented that ratification of the Pay Raise Amendment was in conflict with the purpose of the amendment process--that is "to enact only measures

that are supported by a broad popular consensus" (Barrett). Indeed, after more than two centuries it is easy to question whether its ratification reflects this "broad popular consensus."

When Madison first proposed the amendment, there were only fifteen states in the union and only eleven were needed to ratify. Maryland was the first to ratify it in 1789 and five other states approved it over the next two years. This was the only ratification Madison was to see in his lifetime (Eaton). Then, in 1873, Congress increased its own salary retroactively. This move was highly criticized as a "salary grab" and Ohio quickly became the next state to ratify the amendment that would have prevented Congress from creating such a pay raise. This action by the Ohio legislature caused considerable demand even then that some sort of "statute of limitations" be placed on ratification of amendment proposals (Livingston 227). The proposal was not touched again until 1978 when Wyoming happened to ratify it (McAllister).

Then, in 1982, a student at the University of Texas, Gregory D. Watson, (now an aide to Texas state Representative Richard Williamson), was working on a paper on the Equal Rights Amendment ratification when he discovered the pay raise amendment proposal. He single-handedly began to petition state legislatures in an effort to ratify the amendment. It basically became his life's work for the decade to follow (Phillips, Don). Watson's efforts eventually paid off. In August of 1991, after a total of thirty-five states had ratified the pay-raise amendment, Representative John Boehner (R.-Ohio) introduced a resolution calling on the fifteen remaining states to ratify it (three more were needed) (Renfro). Boehner's resolution was fulfilled in the span of one week.

On Tuesday, May 5, 1992, the legislatures of Missouri and Alabama ratified the amendment and Michigan soon became the deciding state when it ratified the amendment on Thursday, May 7, 1992. Later that same day, New Jersey also ratified the amendment, followed by Illinois on the following Tuesday (Eaton; "With Little Fanfare"). But many questions still remained concerning its certification, and whether or not, after 203 years the ratification was valid.

It is U.S. Archivist Don Wilson, not the president, who has the authority to proclaim official adoption of the amendment (Eaton). Certification by the archivist signifies that the proposal has been ratified by the minimum number of necessary states, that it did not vary from state to state, and that it would have the effect of amending the Constitution ("Amendment on Pay Clears Legal Hurdle"). As of May 8, 1992, Wilson, who could either act alone, or seek the advice of Congress, had not reached a decision. He had not yet received "legal instruments of ratification" and announced that he would not make a decision until he had received and reviewed these documents (Eaton). On May 13th, Wilson said that he would certify the Twenty-seventh Amendment, but the question of its validity was yet to be answered by Congress ("Amendment on Pay Clears Legal Hurdle"). The Twenty-seventh Amendment to the Constitution was certified in a very low-key ceremony on Monday, May 18th. Normally, much is made of an amendment certification with the president witnessing, but this certification was viewed by Wilson as simply "a procedural function" (Phillips, Leslie, "Archivist"). The amendment was published in the Federal Register on Tuesday, May 19th, even though the Constitution had been declared changed upon Michigan's ratification on the seventh of May ("With Little Fanfare").

In the past, the Archivist's certification and subsequent publication was all that was required for an amendment to be final, but due to a ratification process that lasted over two centuries, Congress would decide whether or not they felt the change was valid ("Amendment on Pay Clears Legal Hurdle").

Immediately upon its ratification, House Speaker, Thomas S. Foley (D.-Washington) and Senate Majority Leader George J. Mitchell (D.-Maine) requested legal advice on whether the Twenty-seventh Amendment is legally dead, but Foley stated that he supports the spirit of the amendment (Eaton). Duke University law professor, Walter Dellinger, commented, "I think it's clearly dead" (qtd. in Phillips, Don). Also, an editorial in the May 8th edition of USA Today claims that, like other still technically pending amendments without time limits, the Twenty-seventh Amendment is outmoded and ends can be more easily met by voting out unsatisfactory Congressmen ("A 200-year debate"). Rationale of comments such as these may lie in a 1921 Supreme Court ruling concerning the Eighteenth Amendment which stated that ratification should occur "soon enough to reflect the will of the people at the time" (Eaton). The decision not only stipulated that the ratification must be "sufficiently contemporaneous," but it also gave Congress the power to decide what "sufficiently contemporaneous" means and to impose time limits on ratification if they deemed it necessary ("The Ageless 27th"). It was from that point on that Congress began prescribing such time limits (Eaton).

So after the certification of the Twenty-seventh Amendment, Congress needed to approve a resolution before the amendment was to be final (Phillips, Leslie, "Madison's"). On May 20, 1992, the vote in the Senate was 99-0 to approve the change and "only three House members voted . . . against a

sweeping Congressional endorsement of the just-approved Twenty-seventh Amendment to the Constitution" (the vote was 414-3). The three "no" votes, belonging to Neal Smith (D.-Iowa), Craig Washington (D.-Texas), and Chris Perkins (D.-Kentucky), were only symbolic since the amendment had actually taken effect upon its publication in the Federal Register the previous day ("Amendment No. 27"). An editorial in the May 16th issue of The New York Times suggested that Congress should exercise "Constitutional discipline" by approving this amendment and then officially declaring dead four other proposed amendments with no original time limits ("The Ageless 27th").

Another area of Congressional debate on the subject is on the issue of whether or not the amendment will affect Cost of Living Adjustments (COLAs). Currently, the adjustments take place automatically each year, based on changes in an employment cost index issued by the U.S. Labor Department. COLAs are set at one-half of a percentage point below the figure that the index dictates and they are capped off at five percent per year (Eaton). Varying conclusions have been drawn so far. Dellinger maintains that the amendment effectively "locks in" COLAs, which were voted in three years ago in 1989 as part of the Ethics in Government Act, because Congress will not be able to reject automatic pay increases; they will not be able to vary their own pay "up, down, or sideways." House Speaker Thomas Foley agrees that COLAs will remain valid simply because the legislation establishing COLAs was fully operational by the time the amendment was passed (McAllister). Representative John Boehner (R.-Ohio) disagrees, "I think it is clear . . . that COLAs, under passage of this amendment, will no longer be allowed" (qtd. in McAllister). Representative Neal Smith (D.-Iowa) feared that the amendment

could prevent Congress from cutting their salary, as well as increasing it through a COLA. Recently, Representative Don Edwards (D.-California) urged House leadership to address "through legislation" whether or not midterm COLAs are valid (McAllister).

It has been suggested by many that Congressional decisions on the amendment are driven by Congress's awareness of its poor public image. Some have commented that with the passage of the Twenty-seventh, "Anti-Congress sentiment claimed another victory" (Barrett). Others have noted that, "In the year of the angry voter, the public's disdain for political officeholders is starkly evident" (McAney). In fact, Thomas Durbin, a Congressional research lawyer, completely attributes the ratification to the efforts of people with anti-Congressional attitudes to make a statement. He alleges that "legislatures got on the bandwagon" (Wolf).

Citizens may have reason to feel this way concerning pay raises. Since 1990, Congress has raised its own pay by forty-seven percent, sucking \$20 million each year from taxpayers. They have also hiked pensions by the same amount, creating a burden to future taxpayers (Renfro). In 1989, however, the House of Representatives created a pay raise that would have complied with Madison's proposal. They approved a forty percent raise that did not take effect until January 1, 1991, following the 1990 Congressional election. After the election, however, the Senate, in an effort to maintain parity between House and Senate salaries, adopted a pay increase in July 1991 that took effect immediately (Eaton). Also, cost of living hikes that take place automatically due to COLA legislation, appear to the public as raises that members "accomplish . . . in virtual secrecy, without even having a vote, much less a

recorded vote" (Renfro).

This negative sentiment is indeed evident in an "Honesty and Ethics" poll published in the July 1992 issue of The Gallup Poll Monthly in which state and federal officeholders received their lowest rating in sixteen years. It is noted that of all categories, "Members of Congress have suffered the sharpest decline" (McAney). Only thirteen percent of Americans think that U.S. Senators have high ethical standards, as opposed to nineteen percent in 1991. Eleven percent of Americans feel House members have these high standards, also as opposed to nineteen percent in 1991. As another illustration, "low standard" ratings are up from the previous year for Senators (ten percentage points) and Representatives (eleven percentage points) alike (McAney). It is suggested that the amendment may have little practical immediate impact, "Congress is so unpopular now that lawmakers would scarcely be in a position to vote themselves a pay raise in the near future" (Barrett).

It is now the hope of both the public and lawmakers that the passage of the Twenty-seventh Amendment will help to rectify the atmosphere of negativity and distrust. It is possible that because of ratification, "members will . . . expose their greed or accept one small responsibility of their office-- voting publicly, not secretly, on pay raises" (Renfro). For the American public, the measure essentially means that "the voters get one crack at their legislators before they collect their new paychecks" (Phillips, Don). Berke suggests that legislators were "seizing on a chance to improve their public image." Indeed they may have been; voting in support of this amendment allowed members of Congress to go on record as supporting a self-control

measure (Berke). Representative Peter A. DeFazio (D.-Oregon) commented that “we can eradicate the aura of privilege that has hung over the chamber for over 200 years” (qtd. in Berke). The amendment’s most recent Congressional advocate, Representative Boehner, emphasized that “Ratification is a very important step in restoring America’s confidence in the institution of Congress” (qtd. in Barrett). The hope of Madison and Boehner is now the hope of America; the hope that the Twenty-seventh Amendment will help to provide for us a better, stronger government.

APPENDIX I

Article V of the Constitution of the United States

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

APPENDIX II

The 27th Amendment to the Constitution of the United States

No law, varying the compensation for the services of Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

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